

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

NOEL MARTINEZ, ET AL.

Plaintiffs

v.

CIVIL NO. 16-2430 (RAM)

UNITED STATES OF AMERICA

Defendant

ORDER

RAÚL M. ARIAS-MARXUACH, District Judge

Currently pending before the court is Defendant's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket No. 52). In light of Plaintiffs' own admission that "the exclusion of [their] expert, technically, constitutes the dismissal of the case," Defendants must file a motion for summary judgment, not a motion to dismiss. (Docket No. 48 at 1). See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (finding that summary judgment is proper when a party fails to sufficiently establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial).

Therefore, the Court **DENIES** Defendant's Motion to Dismiss at Docket No. 52 and **GRANTS** Defendant **twenty-one (21) days** to file a motion for summary judgment pursuant to Fed. R. Civ. P. 56. The

motion for summary judgment shall comply with Local Rule 56. In the interest of conserving the parties' and judicial resources, the trial set for October 21, 2019 - October 28, 2019 is hereby

VACATED.

IT IS SO ORDERED.

In San Juan Puerto Rico, this 12th day of September 2019.

S/ RAÚL M. ARIAS-MARXUACH
United States District Judge